

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36005

KCVN, LLC AND COLORADO PACIFIC RAILROAD, LLC—FEEDER LINE
APPLICATION—LINE OF V AND S RAILWAY, LLC, LOCATED IN CROWLEY,
PUEBLO, OTERO, AND KIOWA COUNTIES, COLORADO

Decided: June 7, 2016

On March 18, 2016, KCVN, LLC (KCVN) and its wholly owned subsidiary, Colorado Pacific Railroad, LLC (Colorado Pacific) (collectively applicants), jointly filed an application under the feeder line provision at 49 U.S.C. § 10907 to acquire a 121.9-mile line of railroad, known as the Towner Line, owned by V and S Railway, LLC (V&S) in southeast Colorado. In a decision served on April 15, 2016, the application was accepted and a procedural schedule established. The decision noted, however, that the applicants should provide certain supplemental material by April 29, 2016.

On April 29, 2016, the applicants submitted a public version of their supplement, as well as a confidential version filed under seal. To safeguard the confidential material, on May 4, 2016, the applicants submitted a motion for protective order under 49 C.F.R. § 1104.14. In a decision served on May 16, 2016, that motion was granted and a protective order issued.

On May 19, 2016, V&S filed a motion asking that the due date for comments on the application be extended from June 14 to August 1. It argues that an extension is necessary for it to engage in discovery of the applicants and some third parties. V&S asserts that it made no sense to conduct discovery prior to its receiving an unredacted version of the supplement and application, and that it only received the unredacted supplement late on May 16. The applicants filed in opposition to V&S's motion on May 20, 2016. They argue, among other things, that V&S could have commenced discovery earlier and that they would likely oppose any such discovery.

On May 25, 2016, V&S filed a motion asking that the Board issue subpoenas to certain third parties. It further asks, among other things, that KCVN and Colorado Pacific file a response to its motion by June 1. On May 26, KCVN and Colorado Pacific jointly replied that it would be unfair to substantially shorten their reply deadline when the only reason for doing so is "V&S's dilatory actions" in failing to pursue discovery earlier. They argue that due to commitments of counsel, it is imperative that they have the full 20 days to reply to V&S's motion for subpoenas. On June 1, 2016, the applicants' proposed operator, Kansas and

Oklahoma Railroad, filed a reply opposing V&S's motion for subpoenas and objecting to the expedited schedule V&S seeks in that motion. V&S filed a response on June 2, 2016.¹

In light of the pending motion for subpoenas, the Board assigns and authorizes Administrative Law Judge John P. Dring at the Federal Energy Regulatory Commission (FERC) to entertain and rule upon discovery matters (including the pending motion) and to resolve all disputes concerning discovery in this proceeding.² The parties in this proceeding are hereby directed to send copies of all their filings and documents in this proceeding to Judge Dring at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426.

The deadline for comments on the application will be extended until August 1, 2016.³ This date will permit KCVN and Colorado Pacific to have 20 days to file a response to V&S's motion for subpoenas and provide time to address any discovery disputes prior to the August 1 deadline.⁴

It is ordered:

1. Applicants' reply to V&S's motion for subpoenas is due by June 14, 2016.
2. V&S's motion for extension is granted. Verified statements and comments addressing the application must be filed by August 1, 2016. Verified replies by applicants and other interested parties must be filed by August 22, 2016.
3. This proceeding is assigned to Administrative Law Judge John P. Dring for the handling of all discovery matters and initial resolution of all discovery disputes.
4. Each party in this proceeding must send a copy of its filings to Judge Dring at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426.
5. Judge Dring will be added to the service list in this proceeding and a copy of this decision will be served upon him.

¹ V&S's June 2 response is accepted into the record.

² The Board has signed a Memorandum of Understanding (MOU) with FERC to employ the services of FERC administrative law judges (ALJs) on a case-by-case basis to perform discrete, STB-assigned functions such as adjudicating discovery disputes between parties in cases pending before the STB.

³ The reply deadline also will be adjusted accordingly.

⁴ Discovery can occur as part of a feeder line case. See Or. Int'l Port of Coos Bay—Feeder Line Application—Coos Bay Line of Cent. Or. & Pac. R.R., FD 35160 (STB served Aug. 8, 2008); PYCO Indus.—Feeder Line Application—Lines of S. Plains Switching, Ltd., FD 34890, et al. (STB served Oct. 5, 2006).

6. A copy of this decision will be served on the United States Office of Personnel Management (OPM), at Human Resource Solutions, ALJ Program Office, 1900 E Street N.W., Room 2458, Washington, DC 20414-9400. Judge Dring shall send a copy of the notice or order that constitutes the final disposition of his assignment of this case to OPM at the above address.

7. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.